

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Brian G. Lau, Commission Counsel
Scott Hallabrin, General Counsel

Subject: Amend Recently Adopted Regulation 18421.7 and Regulation 18401

Date: April 18, 2008

Proposed Commission Action and Staff Recommendation: Amend recently adopted Regulation 18421.7 and Regulation 18401.

Reason for Proposal:

Sections 89510-89518 of the Act restrict the personal use of campaign funds. An expenditure of campaign funds conferring a substantial personal benefit on a candidate, paying for a personal gift, or paying for the travel or accommodations of a candidate, elected officer, or anyone with the authority to approve the expenditure of campaign funds must be directly related to a political, legislative, or governmental purpose (a "PLG"). (Sections 89512(b) and 89513.) Furthermore Section 84211(k)(4) of the Act requires a "brief description" of the consideration for which certain expenditures are made.

Section 84104 of the Act requires candidates, treasurers, and elected officers to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that statements were properly filed, and to otherwise comply with the Act's campaign disclosure requirements. Providing more specific recordkeeping requirements, Regulation 18401 establishes different levels of recordkeeping for (1) contributions, receipts, or expenditures of less than \$25; (2) contributions of \$25 or more, but less than \$100, and other receipts of \$25 or more; (3) contributions of \$100 or more; and (4) expenditures of \$25 or more.

In February 2008, the Commission voted to adopt Regulation 18421.7 and to amend Regulation 18401, effective July 1, 2008. As of July 1st Regulation 18421.7 requires candidate controlled committees reporting expenditures for gifts, meals, and out-of-state travel to briefly describe the PLG and to disclose basic information such as the dates of the expenditures, the location of travel or a meal, the number of individuals for whom an expenditure was paid, and the recipient of a gift. Regulation 18401 requires committees to document expenditures for gifts, meals, and out-of-state travel in a dated memorandum and to retain the names of those individuals for whom expenditures for meals or out-of-state travel were paid.

Following the Commission's adoption of Regulation 18421.7 and the amendment to Regulation 18401 at the February Commission meeting, the Commission directed staff to draft

additional language applying the new disclosure and recordkeeping rules to in-state travel and to consider increasing the recordkeeping and disclosure thresholds.

Summary of Proposed Actions:

Staff is recommending language expanding Regulation 18421.7 and Regulation 18401 to in-state-travel. Staff is also recommending language increasing the disclosure threshold for recipients of gifts in Regulation 18421.7(a)(1) from \$25 to \$50. As proposed, Regulation 18421.7(a)(1) will require a candidate controlled committee to disclose the name of a gift recipient, for each itemized expenditure of \$100 or more made for a gift to a group of recipients, only if the benefit to the particular recipient is \$50 or more.

However, staff recommends against amending Regulation 18401 to increase from \$25 to \$50 the threshold at which committees are required to maintain records on contributions and expenditures. Raising the recordkeeping threshold to \$50 would significantly decrease the chances of detecting a contribution limits violation if a contributor makes contributions of less than \$50 after already contributing the maximum allowed under the limits. For jurisdictions with low contribution limits, this could be a rather substantial problem because contributions of less than \$50 may play a pivotal role in a bid for office. Additionally, we have researched the ordinances of several local jurisdictions that have relatively low contribution limits and found that most have not adopted their own recordkeeping rules and rely on Regulation 18401. Raising the recordkeeping requirements to \$50 could, in some of these jurisdictions, totally eliminate the requirement for committees to keep records of specific contributions.

On the question of increasing the recordkeeping threshold for expenditures from \$25 to \$50, staff thinks that the recordkeeping thresholds for contributions and expenditures should be the same for both simplicity and to avoid confusion. On that basis and staff's recommendation against raising the recordkeeping threshold for contributions, we recommend the Commission maintain the recordkeeping threshold for expenditures in Regulation 18401 at the current \$25.

Finally, staff is recommending language in subdivision (b) of Regulation 18421.7 that addresses the reporting of gifts purchased by a committee for which a recipient has not yet been determined prior to the end of the reporting period. The language requires the campaign report for the period to disclose the expenditure was for an "undetermined recipient" and that the committee later amends the report to name the recipient within 45 days of the date the recipient receives the gift.

Attachments:

- 1 – Proposed Amendment to Regulation 18421.7**
- 2 – Proposed Amendment to Regulation 18401**
- 3 – Government Code Section 84211**
- 4 – Government Code Section 84104**